

RULE 69

INSURANCE AND SELF INSURANCE

All employers subject to the Nebraska Workers' Compensation Act, except the State of Nebraska and any governmental agency created by the state, must either carry workers' compensation insurance, or, if eligible, may self-insure through a risk management pool, or, after application to and approval by the Nebraska Workers' Compensation Court, may self-insure their risk, or, in the case of an employer who is a lessor of one or more commercial vehicles leased to a self-insured motor carrier, may be a party to an effective agreement with the self-insured motor carrier under section 48-115.02. No employee may reject the provisions of the Act. No employer, including religious or charitable institutions, and governmental subdivisions, may reject the provisions of the Act.

Sections 44-4304, and 48-103, 48-112, 48-114, 48-115.02, 48-131, R.R.S. 2004, and 48-106, 48-145, R.S. Supp., 2005.

Effective date April 25, 2002.

RULE 70

SELF-INSURANCE

PURPOSE

- A.** The purpose of Rules 70 through 76 is to establish procedures and requirements for an employer seeking approval to self-insure its liability under the Nebraska Workers' Compensation Act, and for approval by the court to self insure.
- B.** No employer may self-insure its liability under the Act or make any representation that it self-insures its liability under the Act unless it has been approved by the court pursuant to these rules.
- C.** All financial information required by the court of an employer seeking approval to self-insure or an employer approved to self-insure shall be confidential.
- D.** An employer approved to self-insure may not delegate the ultimate responsibility for complying with the Act or rules of the court to any other party.

Section 48-145, R.S. Supp., 2005.

Effective date April 25, 2002.

RULE 71

SELF-INSURANCE APPLICATION FOR APPROVAL

- A.** An employer seeking approval to self-insure its liability under the Nebraska Workers' Compensation Act shall submit a written request for an application to the court. The written request for an application must be signed by a corporate officer and be on the employer's own letterhead. The employer requesting an application must:
1. have 100 employees in Nebraska or reasonably expect to have 100 employees in Nebraska within one (1) year of beginning operations in Nebraska;
 2. have a minimum of five (5) years in business under the present organizational structure, and;
 3. be a corporation or political subdivision.
- B.** All questions on the application for approval to self-insure must be fully and accurately answered. Such answers shall be given under oath by an authorized officer of the applicant. Each application for approval to self-insure must be accompanied by:
1. a nonrefundable fee which has been determined in accordance with section 48-145.04(1);
 2. copies of the applicant's certified financial statements for the last five years;
 3. a current payroll report broken down by job classification code plus payroll reports broken down by job classification code for the four previous consecutive years;
 4. incurred loss history for the last five years;
 5. evidence of authorization to transact business in Nebraska or status as a political subdivision, and;
 6. any other information, including supporting documentation, as requested by the court.

Sections 48-145, 48-145.04, R.S. Supp. 2005.
Effective date April 25, 2002.

RULE 72
SELF-INSURANCE
REQUIREMENTS FOR APPROVAL

- A.** The following factors will be among those used in analyzing an application and determining whether an employer can be granted approval to self-insure:
1. standard financial ratio analysis and comparison to similar industry statistical data;
 2. historical operating results;
 3. evaluation of financial trends;
 4. organizational structure and management background;
 5. contingent liabilities;
 6. pending litigation;
 7. general and specific industry economic conditions;
 8. number of employees;
 9. current and historical loss experience, reserves, and modification factor;
 10. safety program;
 11. nature of business;
 12. claim administration procedures, and;
 13. proposed retention and limits for excess insurance.
 14. claims record regarding delinquent payment of indemnity and medical expenses, as defined by section 48-125.
- B.** The court will approve employers to self insure who can provide:
1. satisfactory proof of financial strength and liquidity to meet all obligations under the Nebraska Workers' Compensation Act;
 2. a fully executed parental guarantee if the employer is a subsidiary;
 3. acceptable arrangements for claim administration and injury and payment reporting;
 4. security in accordance with Rule 73;
 5. excess insurance in accordance with Rule 74;
 6. evidence of a safety committee and an effective written injury prevention program in accordance with section 48-443, and;
 7. evidence of compliance with any other requirements under the Act and these rules.
- C.** After reviewing the application and all supporting documentation and other information the court will send written notice of approval, denial, or requirements for further consideration. If the court has additional

requirements, the employer will have 30 days to comply. Upon receipt of a written request the court, at its discretion, may grant the employer additional time to comply. If all requirements are not met within the time prescribed, the application shall be considered withdrawn.

- D.** A certificate of approval to self-insure will be provided upon approval. The term of approval will be included on the certificate.

Sections 48-443, 48-444, 48-445, 48-446, R.R.S. 2004, and section 48-145, R.S. Supp., 2005.

Effective date December 17, 2002.

RULE 73

SELF-INSURANCE SECURITY

- A. Security Requirement.** As a condition for approval to self-insure and continue to self-insure, the employer shall deposit an acceptable security to secure the payment of compensation liabilities under the Nebraska Workers' Compensation Act as they are incurred. Political subdivisions with either unlimited rate making authority or having taxing authority with a tax base of at least \$2,500,000,000 and a general obligation bond rating from Standard & Poor or Moody's Investor Service of "A" or better may, at the discretion of the court, be excluded from this requirement.
- B. Form of Security.** Security shall be in the form of a surety bond or irrevocable workers' compensation trust agreement. Forms for bonds and trust agreements must be approved by the court.
- C. Amount of Security.**
1. The amount of security required, regardless of the method used for determining the amount, will be calculated using Nebraska specific payroll, paid losses, or reserve. The reserve is the actual and present value of the determined and estimated future compensation payments under the Act.
 2. One of two methods will be used by the court to calculate the amount of security required if the employer is able to provide paid loss totals for each of the last three complete calendar years. The formula method, as set out in Rule 73,D, will be used to determine the amount required unless the employer chooses to have the amount calculated based on an actuarial statement of reserve, as set out in Rule 73,F. If the employer is unable to provide paid loss totals for each of the last three complete calendar years, the court will determine the amount of security required based on actual and projected payroll by job classification code. The amount required may be periodically adjusted, at the court's discretion,

until such time as the employer qualifies to have the amount of security determined by the formula or actuarial method.

3. The amount of security required will be determined when the application to self-insure is reviewed and at other times at the court's discretion.
4. Any change to the amount of security shall extend to all compensation liabilities of the employer as a self-insurer, including those liabilities already present, whether known or yet to be discovered.
5. Except in accordance with Rule 73,G the amount of security shall, in no case, be less than \$500,000 or the reserve, whichever is greater.

D. Formula Method. The formula for determining the amount of security is the average of the employer's paid losses for the last three complete calendar years preceding the date the amount of security is determined, multiplied by 2.5. The product is increased by 40% or \$500,000, whichever is greater. The result is the amount of the security required under the formula method.

E. Adjustments to the Formula Method. The amount of security required under the formula method may, at the discretion of the court, be adjusted based on the financial condition of the employer. For purposes of determining eligibility for such an adjustment self-insurers will be assigned to one of three classes. Assignment to a given class shall be in accordance with the criteria set forth in Rule 73,E,1 through Rule 73,E,3, based on the periodic review of financial and other records of the self-insured employer. The self-insurer and its parent, if applicable, must furnish annual audited financial statements to the court within a time frame established by the court. To ascertain continued eligibility for a Class II or Class III designation, the court may periodically request financial statements and other information. Failure to comply with court requests for financial statements and other information will result in assignment to Class I.

1. Class I: Employers in Class I shall be required to deposit security in the full amount calculated according to the formula method as set out in Rule 73,D. Employers assigned to Class I are:
 - a. Employers with a net worth of less than \$100,000,000, excluding goodwill and restricted assets, or;
 - b. Employers not showing a net profit in 4 out of the last 5 years, or;
 - c. Employers not showing a positive operational cash flow in 4 out of the last 5 years regardless of net worth, or;
 - d. Employers with a total reduction of net worth of 50% or more over the last 5 years, or;
 - e. Employers with a reduction in net worth of 25% or more in the most recent year, or;
 - f. Employers with a net worth between \$100,000,000 and \$250,000,000, excluding goodwill and restricted assets, and a net

- worth to asset ratio of less than 20% (i.e. net worth as a percent of assets) excluding goodwill and restricted assets from both net worth and assets, or;
- g. Employers terminating self-insurance for any reason, without regard to eligibility for another class.
2. Class II: Employers in Class II may, at the discretion of the court, be eligible for a 25% reduction in the amount of security calculated according to the formula method as set out in Rule 73,D. In no case shall the amount of security be less than \$500,000 or the reserve, whichever is greater. Employers eligible for Class II are:
- a. Employers with a net worth between \$100,000,000 and \$250,000,000, excluding goodwill and restricted assets, and;
 - i. Net profit in 4 out of the last 5 years, and;
 - ii. Positive operational cash flow in 4 out of the last 5 years, and;
 - iii. No reduction of net worth of 25% or more in the most recent year, and;
 - iv. No reduction of net worth of 50% or more over the last five years, and;
 - v. A net worth to asset ratio of between 20% and 66.67% (i.e. net worth as a percent of assets) excluding goodwill and restricted assets from both net worth and assets;

OR

- b. Employers with a net worth of \$250,000,000 or more excluding goodwill and restricted assets, and;
 - i. Net profit in 4 out of the last 5 years, and;
 - ii. Positive operational cash flow in 4 out of the last 5 years, and;
 - iii. No reduction of net worth of 25% or more in the most recent year, and;
 - iv. No reduction of net worth of 50% or more over the last five years, and;
 - v. A net worth to asset ratio of less than 20% (i.e. net worth as a percent of assets) excluding goodwill and restricted assets from both net worth and assets.
3. Class III: Employers in Class III may, at the discretion of the court, be eligible for a 50% reduction in the amount of security calculated according to the formula method as set out in Rule 73,D. In no case shall the amount of security be less than \$500,000 or the reserve, whichever is greater. Employers eligible for Class III are:
- a. Employers with a net worth between \$100,000,000 and \$250,000,000, excluding goodwill and restricted assets, and;

- i. Net profit in 4 out of the last 5 years, and;
- ii. Positive operational cash flow in 4 out of the last 5 years, and;
- iii. No reduction of net worth of 25% or more in the most recent year and;
- iv. No reduction of net worth of 50% or more over the last five years, and;
- v. A net worth to asset ratio of 66.67% or more (i.e. net worth as a percentage of assets) excluding goodwill and restricted assets from both net worth and assets.

OR

- b. Employers with a net worth of \$250,000,000 or more excluding goodwill and restricted assets, and;
 - i. Net profit in 4 out of the last 5 years, and;
 - ii. Positive operational cash flow in 4 out of the last 5 years, and;
 - iii. No reduction of net worth of 25% or more in the most recent year, and;
 - iv. No reduction of net worth of 50% or more over the last five years, and;
 - v. A net worth to asset ratio of 20% or more (i.e. net worth as a percent of assets) excluding goodwill and restricted assets from both net worth and assets.

F. Actuarial Method. As an alternative to the formula method of determining the amount of security required, the court will calculate the amount required based on an actuarial estimate of compensation liabilities. In no case shall the amount of security be less than \$500,000.

- 1. A qualified independent actuary who is a member of the American Academy of Actuaries or Casualty Actuarial Society must perform an analysis of the self-insurer's workers' compensation liabilities and provide a certified statement of the reserve. The opinion must include a statement that there is no impediment to the actuary's ability to provide an unbiased and independent opinion as to the adequacy of the reserve. The report must also include a synopsis of the nature of the actuary's approach.
- 2. The self-insurer is responsible for any cost associated with obtaining the statement.
- 3. The amount of security required is equal to 66.67% of the actual reserve amount, increased by 40% or \$500,000 whichever is greater.
- 4. An actuarial statement of the reserve must be provided with the application to self-insure. Failure to provide an actuarial statement shall result in the security amount being calculated using the formula method as set out in Rules 73,D and 73,E.

G. Reduction or Release of Security after Termination of Self-Insurance.

An employer whose approval to self-insure has been terminated for at least two years may submit a written request to the court to reduce the amount of security. At its discretion, with satisfactory proof of the actual amount of outstanding compensation liabilities, the court may approve a reduction in the amount of security required. Unless an employer provides the court with satisfactory proof of the transfer of all outstanding compensation liabilities, no security will be released for at least two years after approval to self-insure terminates.

Section 48-145, R.S. Supp., 2005.

Effective date December 17, 2002.

RULE 74

**SELF-INSURANCE
EXCESS INSURANCE**

Specific excess workers' compensation insurance shall be required of each approved self-insurer. Aggregate excess insurance may be required as a condition of approval to self-insure, at the discretion of the court.

- A.** Political subdivisions with either unlimited rate making authority or having taxing authority with a tax base of at least \$2,500,000,000 and with a general obligation bond rating from Standard & Poor or Moody's Investor Service of "A" or better may, at the discretion of the court, be excluded from this requirement.
- B.** The specified upper limit of coverage must be "statutory" and the retention amounts must be approved by the court.
- C.** Each excess workers' compensation policy must be issued by a corporation, association, or organization authorized and licensed by the Nebraska Department of Insurance to transact the business of workers' compensation insurance in this state.
- D.** All excess workers' compensation policy forms and endorsements must be filed with and approved by the Nebraska Department of Insurance. The Nebraska Amendatory Endorsement is required for all excess workers' compensation policies.
- E.** An exact copy of each excess workers' compensation policy must be filed with the court, in its entirety, including any endorsements, amendments, and schedules.

Section 48-145, R.S. Supp., 2005.

Effective date December 17, 2002.

RULE 75

SELF-INSURANCE REPORTING REQUIREMENTS

- A.** The court shall be notified promptly of contemplated mergers, consolidations, acquisitions, divesting or spinning off of current operations, and other major organizational changes.
- B.** The court shall be notified promptly when there is any change in third party administrator, address, court contact, Nebraska Registered Agent, security, or other information in the application.
- C.** The court shall be notified within ten days by certified mail of any bankruptcy filing by the self-insurer or its parent, or any subsidiary of the self-insurer or its parent.
- D.** The self-insurer will furnish additional reports or other information the court may require on an annual or as needed basis.
- E.** The court may conduct periodic audits and special examinations of the self-insurer's payroll and other workers' compensation records, or the records of a third party administrator or other agent acting on behalf of the self-insurer, to ensure compliance with self-insurance requirements and other obligations under the Nebraska Workers' Compensation Act.

Section 48-145, R.S. Supp., 2005.
Effective date April 25, 2002.

RULE 76

SELF-INSURANCE RENEWAL, TERMINATION

- A.** An employer desiring to renew approval to self-insure its liability under the Nebraska Workers' Compensation Act must submit an application to the court thirty days prior to the expiration date shown on the current certificate. Upon receipt of a written request the court, at its discretion, may grant the employer additional time to comply. If the application is not submitted within the time prescribed, approval to self-insure will expire on the date shown on the current certificate or other date specified by the court.
- B.** All questions on the application for renewal of approval to self-insure must be fully and accurately answered. Such answers shall be given under oath by an authorized officer of the applicant. Each application must be accompanied by:
 - 1. a nonrefundable fee which has been determined in accordance with section 48-145.04(1);

2. a copy of the applicant's most recent certified financial statement, and;
 3. any other information, including supporting documentation, as requested by the court.
- C.** Upon receipt of the application and all fees, supporting documentation, and other information, approval to self-insure will be extended until the employer is provided a certificate evidencing renewal of approval to self-insure or until the employer is notified of nonrenewal and the date approval to self-insure will expire.
- D.** The application, supporting documentation, and other information will be analyzed and continued approval to self-insure will be in accordance with Rules 72,A and 72,B.
- E.** After reviewing the application and all supporting documentation and other information, the court will send written notice of renewal or nonrenewal of approval, or requirements for further consideration. If the court has additional requirements, the employer will have 30 days to comply. Upon receipt of a written request the court, at its discretion, may grant the employer additional time to comply. If all requirements are not met within the time prescribed, the application for renewal shall be considered denied and approval to self-insure will expire on the date specified by the court.
- F.** An applicant denied renewal of approval to self-insure may not reapply for one year after receipt of notice of denial.
- G.** An employer may voluntarily terminate approval to self-insure prior to the expiration date shown on the current certificate by providing the court with written notice of the reason for termination, the date and time of the intended termination, the name of the insurer assuming the risk after termination, and the policy number and effective date of the workers' compensation insurance policy.

Sections 48-145, 48-145.04, R.S. Supp., 2005.
Effective date April 25, 2002.